



Environmental Planning Commission

**Agenda Number: 9
Project Number: 1001620
Case Number: 14EPC-40064
October 9, 2014**

Staff Report

Agent City of Albuquerque Planning Department

Applicant City of Albuquerque Planning City Council Services

Text Amendments to the following Sections of the Zoning Code: §14-16-1-5(B) ROA 1994, Definitions; §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone.

Location City-wide

Staff Recommendation

That a recommendation of CONDITIONAL APPROVAL of 14EPC-40064 be forwarded to the City Council based on the Findings beginning on Page 14, and subject to the Conditions for Recommendation of Approval beginning on Page 16.

***Staff Planner
Catalina Lehner, AICP-Senior Planner***

Summary of Analysis

This request is for a recommendation to City Council regarding proposed text amendments to Zoning Code §14-16-1-5(B) ROA 1994, Definitions; §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone. Bill No. O-14-20 was introduced at City Council on August 18, 2014 and referred to the Planning Department. The EPC is a recommending body; the City Council will make the final decision.

The proposed text amendments define secondary dwelling units, make them a permissive use in the R-G and R-2 zones, a conditional use in the RO-1 and R-1 zones, and add requirements regarding height, parking and design. The reason for the proposed text amendments is to allow secondary dwelling units (not apartments, not multi-family residential) in certain zones provided they meet certain requirements. Currently the Zoning Code defines accessory living quarters (living quarters without a kitchen), but is silent regarding such living quarters when they have a kitchen; there is no regulatory oversight. Many secondary living quarters with kitchens (aka secondary dwelling units or “mother-in-law quarters”) exist and were built without regulation. The proposed legislation would acknowledge these secondary dwelling units and fix a regulatory loophole by establishing a definition and requirements.

Though Staff finds that conceptually allowing such units with regulations and closing a loophole are great ideas, the proposed text amendments as written could be problematic to enforce and create unintended consequences (see Section V of this report). Revisions are needed to improve wording and organization and to add language to clarify certain items, thereby making them less ambiguous and more possible to implement. This can be done while supporting the overall legislative intent. Staff recommends that a recommendation of conditional approval, subject to conditions, be forwarded to the Council.

City Departments and other interested agencies reviewed this application from 9/2/2014 to 9/12/2014. Agency comments used in the preparation of this report begin on Page 19.

I. INTRODUCTION

Request

This request is for text amendments to Zoning Code §14-16-2-2, the RO-1 Rural and Open Zone; §14-16-2-6, the R-1 Residential Zone; §14-16-2-10, the R-G Residential Garden Apartment Zone, and §14-16-2-11, the R-2 Residential Zone, and to §14-16-1-5(B), the Definitions Section of the City's Comprehensive Zoning Code.

The proposed text amendments are found in draft legislation authored by Council Services, known as Bill No. O-14-20 (see attachment). O-14-20 was introduced at City Council on August 18, 2014 (see attachment) and subsequently referred to the Planning Department for review.

Intent & Purpose

The overarching intent of the proposed text amendments is to allow another housing option, the need for which has come to the forefront due to shifting demographic patterns. In particular, the aging population is increasing and many people cannot afford to live in high-cost, all-inclusive retirement homes (or even in relatively inexpensive ones). People need options to be able to assist their parents and/or other aging relatives, and the aging often want to maintain some degree of autonomy. Additional housing options are also needed for millennials, the other large demographic cohort.

The proposed text amendments would also help allow a small variation in residential form, provided it is contextually appropriate, limited in size and meets setback requirements, in predominantly single-family neighborhoods. Apartments or duplexes would not be allowed. The proposed text amendments do not intend that the secondary dwelling unit be subdivided onto its own lot; the secondary dwelling unit must remain subservient to the primary dwelling unit.

The purpose of the proposed text amendments is to make secondary dwelling units a permissive use in the R-G and R-2 zones, make them a conditional use in the RO-1 and R-1 zones, and to add requirements regarding the allowed height, parking and design of secondary dwelling units so that secondary dwelling units are regulated and will contextually fit in to the neighborhood.

The proposed text amendments seek to balance the addition of an entitlement (allowing a kitchen in accessory living quarters) with the checks and balances provided by extra requirements regarding height, size, design and parking.

Scope

The proposed text amendments are to the RO-1 Zone, the R-1 Zone, the R-G Zone, the R-2 Zone, and to the Definitions section of the Zoning Code, which are ordinances of general application. The proposed text amendments would apply City-wide. This request is considered legislative in nature.

Environmental Planning Commission (EPC) Role

The task of the Environmental Planning Commission (EPC) is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning

Authority and will make the final decision. The EPC is a recommending body with review authority.

II. OVERVIEW

Context

Many of the more recently adopted sector development plans allow secondary dwellings as a permissive use in residential zones. For instance, the following sector development plans allow secondary dwelling units: Downtown Neighborhood Area (DNA), Volcano Cliffs, Volcano Heights and Volcano Trails. In all plans, the secondary dwelling unit is allowed in residential zones permissively and is limited to 650 sf in size.

While considering secondary dwelling units, Staff became aware of an inconsistency in the Zoning Code. The Zoning Code allows accessory living quarters as long as they have no kitchen, and allows a second kitchen in a house provided it is used by members of one family. Both are conditionally allowed. However, the Zoning Code does not allow stand-alone, accessory living quarters with a kitchen, which are often referred to as secondary dwelling units or “mother-in-law” quarters.

However, many such secondary dwelling units exist already and have become integrated into neighborhoods. As mentioned, with the demographic shift toward an aging population, secondary dwelling units are likely to become more desirable as a viable and affordable housing solution that allows people to maintain some autonomy.

Issues

Currently there is no available option in the Zoning Code to accommodate a stand-alone, accessory dwelling unit that has a kitchen. In other words, if someone wants another DU on their property (ex. mother-in-law quarters) they have to either: attach the second unit to the main house, or change the site’s zoning to zoning that allows townhouses (such as the R-T zone).

The former can really change the character of the house, which is undesirable in terms of fitting in with the neighborhood and could have more serious implications if the house is in a historic district or historic overlay zone. The latter, a zone change, is likely to create a spot zone (which may or may not be justified pursuant to R270-1980) in the middle of a neighborhood and could adversely affect land use stability depending upon the circumstances. It would also entitle townhomes, which could eventually come to replace the single-family home.

Why is this Important?

The proposed text amendments would update the Zoning Code and remove the inconsistency of allowing secondary dwelling units (accessory living quarters) as long as they have no kitchen, but prohibiting such dwellings if they have a kitchen, even though many already exist. They would allow people to legally provide another housing option for family members, especially the aging who need some care but typically want to retain some autonomy. This option is more affordable than most retirement homes.

The proposed text amendments would also create clarity by adding a defined term for a type of existing dwelling unit, by meeting the needs of people whose secondary dwelling unit is prohibited by the Zoning Code and they're knowingly in non-compliance, and by no longer forcing people to pursue a greater remedy than necessary (a zone change) with potential unintended consequences in order to comply.

Because the Zoning Code is silent on the issue, currently it is allowed and possible to construct an accessory building that is totally out of character and scale with the existing home and neighborhood in terms of height, size and design, because there are no regulations. The proposed text amendments seek to establish such regulations for secondary dwelling units, which will ensure that the dwelling units integrate with their surroundings.

III. ZONING

Definitions

The following definitions in §14-16-1-5 are relevant to the subject matter of the proposed text amendments. The term "secondary dwelling unit" does not exist in the Zoning Code and needs to be defined for the sake of clarity and consistency. The existing terms will be unaffected. Accessory buildings and accessory living quarters, for example, continue to be used to describe what's in the built environment.

APARTMENT. Structures containing two or more dwelling units each, including dwelling units which do not have a separate entrance leading directly to the outdoors at ground level.

BUILDING, ACCESSORY. A building detached from and smaller than the main building on the same lot; the use of an accessory building shall be appropriate, subordinate, and customarily incidental to the main use of the lot.

DWELLING UNIT. One or more connected rooms and a single kitchen designed for and occupied by no more than one family for living and sleeping purposes, permanently installed on a permanent foundation which has received a permit from the city pursuant to Chapter 14, Article 1, and the structure is either:

- (1) Constructed to the standards of the city Building Code and other technical codes adopted in § 14-1-3, as of the date of the unit's construction; or
- (2) A single family detached dwelling with a heated area at least 36 by 24 feet and 864 square feet, constructed in a factory to the standards of the U.S. Department of Housing and Urban Development, National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., HUD Zone Code II, as amended to the date of the unit's construction, and installed consistent with the Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978), regulation Sec. 1007, ground level installation, and regulation Sec. 1009, ground anchors; such dwelling shall be consistent with applicable historic or aesthetic standards which may be adopted by city ordinance.

KITCHEN. An area of a dwelling where there is a sink and a significant cooking appliance, including but not limited to a range, oven, microwave oven, or hot plate, in close proximity.

LIVING QUARTERS, ACCESSORY. Living quarters within an accessory building having no kitchen.

PREMISES. Any lot or combination of contiguous lots held in single ownership, together with the development thereon; there may be multiple occupancy.

YARD, FRONT. That part of a lot between the front lot line and the front facades of the principal building on the lot, and extended to both side lot lines.

YARD, REAR. That part of a lot between the rear lot line and the rear facades of the principal building on the lot, and extended to both side lot lines.

YARD, SIDE. That part of a lot not surrounded by buildings and not in the front or rear yard.

Zones

The zones affected by the proposed text amendments are the RO-1 Rural and Open Zone (§14-16-2-2,); the R-1 Residential Zone (§14-16-2-6,); the R-G Residential Garden Apartment Zone (§14-16-2-10), and the R-2 Residential Zone (§14-16-2-11). The RO-1 zone and the R-1 zone allow “house, one per lot” permissively. Accessory living quarters and second kitchen are conditional uses. The R-T zone refers to the R-1 zone. The R-G and R-2 zones refer to the R-T and the R-1 zones.

IV. ANALYSIS OF COMPLIANCE WITH APPLICABLE LAWS, ORDINANCES & PLANS

Applicable ordinances, plans, and policies are in regular text followed by Staff analysis in **bold italics**.

Charter of the City of Albuquerque

The Citizens of Albuquerque adopted the City Charter in 1971. Applicable articles include:

Article I, Incorporation and Powers

“The municipal corporation now existing and known as the City of Albuquerque shall remain and continue to be a body corporate and may exercise all legislative powers and perform all functions not expressly denied by general law or charter. Unless otherwise provided in this Charter, the power of the city to legislate is permissive and not mandatory. If the city does not legislate, it may nevertheless act in the manner provided by law. *The purpose of this Charter is to provide for maximum local self government.* A liberal construction shall be given to the powers granted by this Charter.” (emphasis added)

Article IX, Environmental Protection

“The Council (City Commission) in the interest of the public in general shall protect and preserve environmental features such as water, air and other natural endowments, ensure the proper use and development of land, and promote and maintain an aesthetic and humane urban environment. To affect these ends the Council shall take whatever action is necessary and shall enact ordinances and

shall establish appropriate Commissions, Boards or Committees with jurisdiction, authority and staff sufficient to effectively administer city policy in this area.”

Adding provisions to the ROA 1994 to allow and define secondary dwelling units is an exercise in local self government (City Charter, Article 1). Amending the Comprehensive Zoning Code to allow secondary dwelling units and associated regulations generally expresses the Council’s desire to ensure the proper use and development of land, and to generally promote and maintain an aesthetic and humane urban environment (City Charter, Article IX).

Comprehensive City Zoning Code

Authority and Purpose (summarized): The Zoning Code is Article 16 within Chapter 14 of the Revised Code of Ordinances of Albuquerque, New Mexico, 1994 (often cited as ROA 1994). The administration and enforcement of the Zoning Code is within the City’s general police power authority for the purposes of promoting the health, safety, and general welfare of the public. As such, the Zoning Code is a regulatory instrument for controlling land use activities for general public benefit.

Role of Land Use Boards (aka Amendment Procedure, summarized): The City Council is the zoning authority for the City of Albuquerque and has sole authority to amend the Zoning Code. Through the City Charter, the City Council has delegated broad planning and zoning authorities to the Environmental Planning Commission (EPC). The EPC is advisory to the City Council regarding proposed text amendments to the Zoning Code.

The application for proposed text amendments to Zoning Code §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone, and to §14-16-1-5(B), Definitions, was filed in accordance with Zoning Code requirements. The proposed text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Allowing and defining secondary dwelling units would positively impact the built and natural environment and the overall health and welfare of the City. However, as the zoning authority for the City of Albuquerque, the City Council will make the final determination.

Albuquerque/Bernalillo County Comprehensive Plan

The Comprehensive Plan, the Rank I planning document for the City, contains goals and policies that provide a framework for development and service provision. The Plan’s goals and policies serve as a means to evaluate development proposals and text amendments requests. Applicable goals and policies include:

B. Land Use Policies-Developing & Established Urban Areas

Section II.B.5- Developing and Established Urban Areas, Goal: The Goal is “to create a quality urban environment, which perpetuates the tradition of identifiable, individual but integrated

communities within the metropolitan area and which offers variety and maximum choice in housing, transportation, work areas, and life styles, while creating a visually pleasing built environment.”

The proposed text amendments would allow additional variety and increase choice in housing options. Another housing option would be available, and be more affordable, for seniors and young people needing and/or wanting to live near their families. Multi-generational living as a lifestyle would be promoted. The restrictions regarding ownership, height, size and architectural character would ensure compatibility and a visually pleasing built environment. The request generally furthers the Developing and Established Urban Area Goal.

Policy II.B.5d: The location, intensity, and design of new development shall respect existing neighborhood values, natural environmental conditions and carrying capacities, scenic resources, and resources of other social, cultural, recreational concern.

The request would allow secondary dwelling units and establish regulations for their height, size and design. The regulations would help the new dwelling units respect existing neighborhood values by visually integrating them with the neighborhood. The location and intensity would respect carrying capacities because only one secondary dwelling unit would be allowed per premises. The height restriction would respect scenic resources, and social and perhaps cultural resources would be generally respected by providing an option for multi-generational housing for families. One neighborhood association has expressed opposition. Environmental and recreational resources aren't really a factor here. The request furthers Policy II.B.5d-neighborhood/ environmental conditions/resources.

D. Community Resource Management-

Transportation & Transit Policy II.D.4c: In order to add to transit ridership, and where it will not destabilize adjacent neighborhoods, additional dwelling units are encouraged close to Major Transit and Enhanced Transit streets.

In some cases, the secondary dwelling units would be located near major and enhanced transit streets such as Central Ave., Montgomery Blvd., Menaul Blvd., San Mateo Blvd., Coors Blvd., etc. This has the potential to add transit ridership, but in a limited fashion since the dwelling units are one per lot and small in size. The request partially furthers Transportation & Transit Policy II.D.4c- transit ridership.

Housing Goal: The Goal is to increase the supply of affordable housing; conserve and improve the quality of housing; ameliorate the problems of homelessness, overcrowding, and displacement of low income residents; and assure against discrimination in the provision of housing.

In general, the proposed text amendments would help increase the supply of affordable housing. The secondary dwelling units, limited in size, would be more affordable for seniors

and young people (and others) than retirement homes and probably most apartments. The request generally furthers the Housing Goal.

Housing Policy II.D.5a: The supply of affordable housing shall be preserved and increased, and the opportunity to obtain standard housing for a reasonable proportion of income assured.

Again, the proposed text amendments would help to increase the supply of affordable housing. Because they would be limited in size, secondary dwelling units would be by nature more affordable than larger dwellings. Also, they are intended for either the owner or relatives who need standard housing for a reasonable proportion of income. The request generally furthers Housing Policy II.D.5a- affordable housing.

V. IMPLEMENTATION & ISSUES

A couple of issues warrant discussion: Enforcement Concerns and Unintended Consequences. When Staff met with the Code Compliance Official, several practical concerns became apparent. Though Staff considers the idea supportable in concept, there are some disconnects between the idea and its implementation.

For the proposed legislation to be effective, and to not create lack of enforceability and/or misaligned expectations by the public, it is critical to explore these concerns and determine how they can be addressed. The legislation needs to be practical and manageable, in addition to putting forth a supportable idea.

Enforcement Concerns

As written, the proposed text amendments would create difficulty for Code Enforcement Staff in the field who are charged with responding to complaints regarding possible violations of the ordinance. For instance, the text amendments would require that the primary or secondary dwelling be owner-occupied. It would be difficult for the field inspector to knock on doors and demand proof of identity and ownership. Furthermore, what if the dwelling is owned by a business or a trust? Who would occupy it? Trying to prove or disprove that someone lives there would require surveillance of that person which, again, places Code Enforcement Staff in an awkward position.

The Zoning Code is a criminal code. A zoning violation is much like a speeding ticket; both are relatively minor compared to other charges the Metropolitan Court hears such as DWIs, drug charges, and various more serious crimes. Trying to prove identity and ownership is likely to go to the bottom of the Judge's priorities and, when heard, a judge is likely to make Staff provide compelling evidence that would have been extremely difficult to collect (see above). It may come down to "you can't prove that I don't live there", which is a difficult position to put Staff in.

Code Enforcement Staff is also concerned that the proposed legislation does not address secondary dwelling units that already exist. Would all existing secondary dwelling units become nonconforming as of the adoption date of the legislation, or just those that exceed the new size limitations? Determining status of existing secondary dwelling units and tracking them is likely to be difficult. Also, how would it be possible to demonstrate that a secondary dwelling unit has lost

its non-conforming status if, for example, the property owner moves? People are unlikely to report this to begin with, even if they are aware that secondary dwelling units would have become regulated.

Issues & Unintended Consequences

Location - The requirement for the secondary dwelling unit at the rear of the property is likely to be problematic in application. Many subdivisions (ex. east of Tramway) are characterized by irregularly shaped lots, meaning that the lots are rectangular and may not have a rear yard. The position on the home on the lot is such that the secondary dwelling unit would only be practicable on the side of the main dwelling. The unintended consequence is that certain large lots, where a secondary dwelling unit could work, would not be allowed to have one. Staff has crafted a condition of approval to address this.

Parking- One off-street parking space is required for a secondary dwelling unit. What happens in cases where the drive-way is already full? (ex. households with parents and teens, each with their own car). It's unclear why the parking space has to be off-street. The unintended consequence is the potential increase in parking in the front yard setback area.

In May 2007, legislation was adopted that prohibits parking in the front yard setback area in the R-1, R-LT, and R-T zones (Bill NO. O-07-61) as follows: "Parking on any portion of a front yard setback area, other than the improved parking and maneuvering areas, is prohibited." The proposed text amendments, however, apply to the RO-1, R-1, R-G and R-2 zones and do not align with the front yard parking prohibition, except for in the R-1 zone.

If the parking space has to be off-street, where is the secondary dwelling inhabitant going to park, if they drive? It seems practical that they would park on the street, though this is not allowed by the proposed text amendments. If in the R-1 zone, they cannot park in the front yard setback area. However, if in the RO-1, R-G and R-2 zones, it seems they could park in the front yard setback area since the 2007 legislation does not include these zones.

VI. ANALYSIS- PROPOSED TEXT AMENDMENTS & DISCUSSION

The proposed text amendments are to §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone, and to §14-16-1-5(B), Definitions, of the Zoning Code. New language is [underlined and bracketed]. Deleted language is [~~underlined, bracketed and struck through~~].

Planning Staff's suggested additions to the originally drafted legislation are indicated by **grey highlighting** (deletions and re-wording is not greyed). Explanations are in **bold italics**. Page references are to the proposed legislation (see attachment).

A) Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 1-5(B), DEFINITIONS

1. Page 1, Lines 9 & 10:

Section 1. Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition [~~s in alphabetical order~~] :

Suggested change since only one definition is proposed to be added.

2. Page 1, Lines 11 & 12- definition:

SECONDARY DWELLING UNIT. Living quarters within an accessory building containing [~~kitchen facilities~~] [+a kitchen+].

Kitchen facilities is not a defined term in the Zoning Code. For consistency, usage of the defined term "kitchen" is preferable.

B) Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Subsection 2-2(B)(1), the RO-1 RURAL AND OPEN ZONE; Subsection 2-6(B)(1), the R-1 RESIDENTIAL ZONE; Subsection 2-10(A)(2), the R-G RESIDENTIAL GARDEN APARTMENT ZONE; and Subsection 2-1(A)(2), the R-2 RESIDENTIAL ZONE,

Note: The same proposed language is repeated for all four zones. Staff's comments, though stated here once, apply to the language in all four zones.

3. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- a. The Secondary Dwelling Unit [~~is clearly~~] [+shall clearly be+] secondary and incidental to the primary dwelling unit. In no case can the Secondary Dwelling Unit be larger than the primary dwelling unit.

The proposed language reads better, though Staff is struggling with what "clearly" means and how it can be better explained.

4. Page 1, Lines 20-21; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- b. [~~There shall be no more than either one Secondary Dwelling Unit or one Accessory Living Quarters per premise but not both.~~]

[+No more than one secondary dwelling unit or one accessory living quarters is allowed per premise. In no case shall both be allowed on the same premise. +]

Staff believes that it's critical to make this as clear as possible, hence the suggested language. Premise is a defined term in the Zoning Code. In the case of very large lots, one premise could accommodate more than one secondary dwelling unit which could, in effect, function somewhat like apartments. This explicit restriction could help address the neighborhood concern that the proposed text amendments would result in de facto apartments in primarily single-family neighborhoods.

5. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- c. Occupancy: The property owner must occupy either the primary or ~~the~~ secondary dwelling unit ~~and shall produce proof of ownership as requested by the City.~~

As mentioned, this provision is probably the most difficult to enforce. Staff added language to give property owners a “heads-up” that they will need to prove ownership if Code Enforcement (or other City) Staff request it as part of an enforcement investigation.

6. Page 1, Lines 25 & 26 and Page 2, Lines 1-6; Page 3, Lines 3-11; Page 4, Lines 8-14; Page 5, Lines 14-20:

- d. Size: ~~The secondary dwelling unit shall not exceed:~~
- i. ~~Maximum 650 net square feet footprint~~ ~~650 square feet in size~~ for lots 5,000 square feet or less.
 - ii. ~~Maximum 800 net square feet footprint~~ ~~800 square feet in size~~ for lots greater than 5,000 square feet but not greater than 10,000 square feet.
 - iii. ~~Maximum 1,000 net square feet footprint~~ ~~1,000 square feet in size~~ for lots greater than 10,000 square feet.

Staff suggests re-organizing the language for readability and clarity and adding a topic sentence to d., since size of the secondary dwelling unit is important and part of what makes it secondary in nature. It’s unclear how “net” is determined here, and using plain square footage is easier to measure and administer.

7. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- iv. A garage or shed attached to the Secondary Dwelling Unit shall not count towards the square ~~feet limit~~ ~~footage limitation~~ or the secondary dwelling unit. The garage or shed shall not exceed 50% of the size of the secondary dwelling unit.

There is no proposed regulation regarding the size of the garage or shed, which could become larger than the secondary dwelling unit and defeat the purpose of the size limitations. Staff suggests that the garage or shed be no more than 50% the allowed size of the secondary dwelling unit. Otherwise, the garage could be so large it could encompass most of the back yard. However, this doesn’t address the enforcement problem that people could start living in the garage.

8. Page 2, Lines 7 & 8; Page 3, Lines 12 & 13; Page 4, Lines 17 & 18; Page 5, Lines 23 & 24:

- e. ~~Setbacks~~ ~~Location~~: Secondary dwelling units shall be located to the rear of the primary dwelling unit. ~~In subdivisions characterized by lots that are irregular shaped (not rectangular), a secondary dwelling unit may be allowed~~

in the side yard provided required setbacks are met.+]

The label “setbacks” has been moved to the start of the discussion about numerical separation distances (setbacks)- see 9. below, and the location on the lot broken-out because it’s a conceptually distinct (though related) issue.

Staff suggests new language to deal with the fact that many larger lots are irregularly shaped (i.e.-not a rectangle). Location in the side yard warrants an increased side setback for large, irregularly shaped lots (see 10, below). Clarification is needed so Staff know how to handle such requests.

9. Page 2, Line 8; Page 3, Line 13; Page 4, Line 18; Page 5, Line 24:

primary dwelling unit. [+f+] There shall be a minimum [of 10 feet] [+10 foot+] separation

The suggested revision adds new labeling and makes setbacks a new letter f, since it’s a different concept from location, which Staff suggests be the new label for e, above. It also corrects a minor grammatical issue.

10. Page 2, Line 12; Page 3, Line 17; Page 4, Line 22; Page 5, Line 28:

i. Side: 5 feet. [+10 feet if the secondary dwelling unit is located in the side yard.+]

Location in the side yard warrants an increased side setback for large, irregularly shaped lots.

11. Page 2, Lines 1-19; Page 3, Lines 21-24; Page 4, Lines 26-29; Pages 5 & 6, Lines 32 & 33 and 1 & 2:

[f.][+g.+] Height: Secondary dwelling units shall not exceed 18 feet in height [:] [+,+]
[Height shall be defined] as [the height] measured at the highest point of
The coping for a flat roof or from the ridge of a mansard, gambrel, shed,
hip or gable roof.

Staff suggests this wording primarily because it reads better, but also because it’s not necessary to define Height- just say how to measure it.

12. Page 2, Line 20; Page 3, Line 25; Page 4, Line 30; Page 6, Line 3:

[g.][+h.+] Parking: One off-street space [per unit] [+is allowed for the secondary dwelling unit+].

This revision clarifies that a secondary dwelling unit is allowed one off-street parking space. The “per unit” makes it sound like more than one secondary dwelling unit is allowed on a premises.

13. Page 2, Lines 21-24; Page 3, Lines 26-29; Page 4 & 5, Lines 31 & 32 and 1 & 2; Page 6, Lines 4-7:

[h.][i.] Design. The design of the secondary dwelling unit shall relate to the design of the primary dwelling unit by use of similar exterior wall materials or finishes, **[+colors, +]** architectural style and elements, including but not limited to roofing materials and roof pitch.

How will it be possible to evaluate what “similar” means? This seems subjective and variable, and could result in greater differences between the primary and the secondary dwelling unit than are intended. Staff suggests adding colors. Without this stipulation, the secondary dwelling unit could be painted a color that differs radically from the primary dwelling unit and departs from the neighborhood aesthetic.

VII. COMMENTS

CONCERNS OF REVIEWING AGENCIES

Long Range Planning supports the text amendments because they would allow for multi-generational housing and accommodate aging in place and millennials living with their families. The restrictions would ensure that secondary dwelling units are subordinate to the primary residence in terms of height, size and style.

Code Enforcement Staff did not comment as part of agency comments. Rather, Staff interviewed the Zoning Enforcement Manager about the proposed text amendments. His concerns, mainly about the enforceability and practicality of the proposed text amendments, are discussed in Section V of this report. The Office of Neighborhood Coordination (ONC) stated that an article regarding the proposed text amendments was published in the September/October 2014 issue of the Neighborhood News.

Hydrology Staff recommends a square footage maximum for the garage/shed. A large garage/shed in the backyard may create a drainage problem for the lot. Staff from the Mid-Region Council of Governments (MRCOG) notes that the over 65 population is increasing. Accessory dwelling units provide another housing option and can increase density through infill development without building up, and that the State Statute of New Mexico supports the implementation of accessory dwelling units. The pre-hearing discussion meeting was held on September 17, 2014. Agency comments begin on p. 19.

NEIGHBORHOOD & OTHER CONCERNS

The proposed text amendments were posted on the Planning Department’s main web page and announced in the September/October 2014 issue of the Neighborhood News (NN) (see attachments). Staff sent a brief article to Office of Neighborhood Coordination (ONC) Staff for inclusion in the NN.

As of this writing, Staff has received two comments. The Inez Neighborhood Association is concerned that secondary dwelling units would become rental units that would need a separate address and utility connections, and that loosening rules to allow such dwellings would serve no economic need in areas that would have the space to take advantage of it. The other comment is

from an individual stating that he is fine with adding secondary dwelling units as long as the lot is large enough (see attachments).

VIII. CONCLUSION

This request is for a recommendation to City Council regarding proposed text amendments to the following subsections of the Zoning Code: Definitions (§14-16-1-5(B)); the RO-1 Rural and Open Zone (§14-16-2-2); the R-1 Residential Zone (§14-16-2-6); the R-G Residential Garden Apartment Zone (§14-16-2-10), and the R-2 Residential Zone (§14-16-2-11). Bill No. O-14-20 was introduced at City Council on August 18, 2014 and referred to the Planning Department. The EPC is a recommending body; the City Council will make the final decision.

The intent of the proposed text amendments is to allow people to legally provide an affordable housing option for family members, especially the aging. Apartments or duplexes would not be allowed, and the secondary dwelling unit must remain subservient to the primary dwelling unit.

Secondary dwelling units would be a permissive use in the R-G and R-2 zones and a conditional use in the RO-1 and R-1 zones. Requirements regarding height, parking and design would be added. Currently it's possible to construct an accessory building that is totally out of character and scale with the existing home and neighborhood because there are no regulations.

The proposed text amendments were announced in the Neighborhood News and posted to the Planning Department's web page. Staff has received two comments as of this writing; one indicating opposition and the other indicating general approval of the idea.

Staff finds that the proposed text amendments generally further applicable Goals and policies. However, as written, the legislation is likely to be problematic to enforce and could create unintended consequences. Revisions are needed to improve wording and organization and to add language to clarify certain items, thereby making them less ambiguous and more possible to implement. Staff recommends that an approval recommendation, with conditions, be forwarded to the City Council.

RECOMMENDED FINDINGS- 14EPC-40064, October 9, 2014- Zoning Code Text Amendments

1. The request is for a recommendation to City Council regarding text amendments to Zoning Code §14-16-1-5(B) ROA 1994, Definitions; §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone.
2. The overarching intent of the proposed text amendments is to allow another housing option, the need for which has come to the forefront due to shifting demographics. In particular, the aging population is increasing and many people cannot afford to live in a high-cost, all-inclusive retirement home (or even a relatively inexpensive one). People need options to be able to assist their parents or other relatives. Additional housing options are also needed for millennials.
3. The purpose of the proposed text amendments is to make secondary dwelling units a permissive use in the R-G and R-2 zones, make them a conditional use in the RO-1 and R-1 zones, and to add requirements regarding the allowed height, parking and design of secondary dwelling units so that secondary dwelling units are regulated and will contextually fit in to the neighborhood.
4. Bill No. O-14-20 was introduced at City Council on August 18, 2014 and subsequently referred to the Planning Department for review. The EPC's task is to make a recommendation to the City Council regarding the proposed text amendments. The City Council is the City's Zoning Authority and will make the final decision.
5. The Albuquerque/Bernalillo County Comprehensive Plan and the City of Albuquerque Comprehensive Zoning Code are incorporated herein by reference and made part of the record for all purposes.
6. Intent of the City Charter:
Adding provisions to the ROA 1994 to allow and define secondary dwelling units is an exercise in local self-government (City Charter, Article 1). Amending the Comprehensive Zoning Code to allow secondary dwelling units and associated regulations generally expresses the Council's desire to ensure the proper use and development of land, and to generally promote and maintain an aesthetic and humane urban environment (City Charter, Article IX).
7. Intent of the Zoning Code (§14-16-1-3):
The application for text amendments to the Zoning Code (the RO-1 Rural and Open Zone, R-1 Residential Zone, R-G Residential Garden Apartment Zone, R-2 Residential Zone, and Definitions), was filed in accordance with Zoning Code requirements. The text amendments generally further the Zoning Code goal of promoting the health, safety and welfare of the citizens. Allowing and defining secondary dwelling units would positively impact the built and

natural environment and the overall health and welfare of the City. However, as the zoning authority for the City of Albuquerque, the City Council will make the final determination.

8. The request furthers the following Comprehensive Plan Goal and policy:
 - A. Developing & Established Urban Goal: The request would allow additional variety and increase choice in housing options. Another, more affordable housing option would be available for seniors and young people needing and/or wanting to live near their families. Multi-generational living as a lifestyle would be promoted. Restrictions regarding ownership, height, size and architectural character would ensure compatibility and a visually pleasing built environment.
 - B. Policy II.B.5d- neighborhood/ environmental conditions/resources: The request would allow secondary dwelling units. Regulations for their height, size and design would help the new dwelling units respect existing neighborhood values by visually integrating them with the neighborhood. The location and intensity would respect carrying capacities because only one secondary dwelling unit would be allowed per premises. The height restriction would respect scenic resources. Social and perhaps cultural resources would generally be respected because multi-generational housing would be facilitated.
9. The request furthers the Housing Goal and Housing Policy II.D.5a in the Comprehensive Plan, Section D. Community Resource Management.
 - A. Housing Goal: In general, the text amendments would help increase the supply of affordable housing. The secondary dwelling units, limited in size, would be more affordable for seniors and young people (and others) than many retirement homes and apartments.
 - B. Housing Policy II.D.5a- affordable housing: Allowing the use of permeable paving is a method of conserving runoff water and is part of an overall water resource management strategy.
10. The request partially furthers Transportation & Transit Policy II.D.4c- transit ridership. In some cases, the secondary dwelling units would be located near major and enhanced transit streets such as Central Ave., Menaul Blvd., Coors Blvd., etc. This has the potential to add transit ridership, but in a limited fashion since the dwelling units are one per lot and small in size.
11. As written, the legislation could be problematic to enforce regarding occupancy and ownership. Code Enforcement Staff has expressed concern about this. Unintended consequences could result, such as disallowing secondary dwelling units on large, irregularly shaped lots because they don't have a definitive rear yard and encouraging parking in the front yard setback area because an off-street parking space is required.

12. Conditions for Recommendation of Approval are needed to improve wording and organization and to add clarifying language for certain items, thereby making them less ambiguous and more possible to implement.
13. The proposed text amendments were posted on the Planning Department's main web page and were announced in the September/October 2014 issue of the Neighborhood News, published by the Office of Neighborhood Coordination (ONC). As of this writing, Staff has two comments. The Inez Neighborhood Association is concerned that secondary dwelling units would become rentals, and that allowing such dwellings would serve no economic need in areas that would have the space to take advantage of it. The other comment is from an individual stating that he is fine with secondary dwelling units as long as the lot is large enough.

RECOMMENDATION

That a recommendation of APPROVAL of Text Amendments to Zoning Code §14-16-1-5(B) ROA 1994, Definitions; §14-16-2-2, RO-1 Rural and Open Zone; §14-16-2-6, R-1 Residential Zone; §14-16-2-10, R-G Residential Garden Apartment Zone, and §14-16-2-11, R-2 Residential Zone, be forwarded to the City Council based on the preceding Findings and subject to the following Conditions for Recommendation of Approval.

CONDITIONS FOR RECOMMENDATION OF APPROVAL- 14EPC-40064, October 9, 2014- Zoning Code Text Amendments

Note: New language is [+underlined and bracketed+]. Deleted language is [underlined, bracketed and struck through]. Planning Staff's suggested additions and deletions are indicated by grey highlighting.

Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Section 1-5(B), DEFINITIONS

1. Page 1, Lines 9 &10:
Section 1. Subsection 14-16-1-5(B), the Definitions section of the Zoning Code, is amended to add the following definition [s in alphabetical order]:
2. Page 1, Lines 11 & 12- definition:
SECONDARY DWELLING UNIT. Living quarters within an accessory building containing [kitchen facilities] [+a kitchen+].

Albuquerque Code of Ordinances, Chapter 14- Zoning, Planning & Building, Article 16- Zoning Code, Subsection 2-2(B)(1), the RO-1 RURAL AND OPEN ZONE; Subsection 2-6(B)(1), the R-1 RESIDENTIAL ZONE; Subsection 2-10(A)(2), the R-G RESIDENTIAL GARDEN APARTMENT ZONE; and Subsection 2-1(A)(2), the R-2 RESIDENTIAL ZONE.

Note: The same proposed language is repeated for all four zones. The recommended conditions apply to the language in all four zones.

3. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- a. The Secondary Dwelling Unit [~~is clearly~~] [+shall clearly be+] secondary and incidental to the primary dwelling unit. In no case can the Secondary Dwelling Unit be larger than the primary dwelling unit.

4. Page 1, Lines 20-21; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- b. [~~There shall be no more than either one Secondary Dwelling Unit or one Accessory Living Quarters per premise but not both.~~]

[+No more than one secondary dwelling unit or one accessory living quarters is allowed per premise. In no case shall both be allowed on the same premise. +]

5. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- c. Occupancy: The property owner must occupy either the primary or [+the+] secondary dwelling unit [+ , and shall produce proof of ownership as requested by the City. +]

6. Page 1, Lines 25 & 26 and Page 2, Lines 1-6; Page 3, Lines 3-11; Page 4, Lines 8-14; Page 5, Lines 14-20:

d. Size: [+The secondary dwelling unit shall not exceed: +]

- i. [~~Maximum 650 net square feet footprint~~] [+650 square feet in size+] for lots 5,000 square feet or less.
- ii. [~~Maximum 800 net square feet footprint~~] [+800 square feet in size+] for lots greater than 5,000 square feet but not greater than 10,000 square feet.
- iii. [~~Maximum 1,000 net square feet footprint~~] [+1,000 square feet in size+] for lots greater than 10,000 square feet.

7. Page 1, Lines 17-19; Page 2, Lines 29-31; Page 4, Lines 1-3; Page 5, Lines 7-9:

- iv. A garage or shed attached to the Secondary Dwelling Unit shall not count towards the square [~~feet limit~~] [+footage limitation f or the secondary dwelling unit. The garage or shed shall not exceed 50% of the size of the secondary dwelling unit+].

8. Page 2, Lines 7 & 8; Page 3, Lines 12 & 13; Page 4, Lines 17 & 18; Page 5, Lines 23 & 24:

- e. ~~[Setbacks]~~~~[+Location+]~~: Secondary dwelling units shall be located to the rear of the primary dwelling unit. ~~[+In subdivisions characterized by lots that are irregular shaped (not rectangular), a secondary dwelling unit may be allowed in the side yard provided required setbacks are met.+]~~

9. Page 2, Line 8; Page 3, Line 13; Page 4, Line 18; Page 5, Line 24:

- primary dwelling unit. ~~[+f+]~~ There shall be a minimum ~~[of 10 feet]~~ ~~[+10 foot+]~~ separation

10. Page 2, Line 12; Page 3, Line 17; Page 4, Line 22; Page 5, Line 28:

- i. Side: 5 feet. ~~[+10 feet if the secondary dwelling unit is located in the side yard.+]~~

11. Page 2, Lines 1-19; Page 3, Lines 21-24; Page 4, Lines 26-29; Pages 5 & 6, Lines 32 & 33 and 1 & 2:

- ~~[f.]~~~~[+g.+]~~ Height: Secondary dwelling units shall not exceed 18 feet in height ~~[+]~~ ~~[+g.+]~~
~~[Height shall be defined]~~ as ~~[the height]~~ measured at the highest point of
The coping for a flat roof or from the ridge of a mansard, gambrel, shed,
hip or gable roof.

12. Page 2, Line 20; Page 3, Line 25; Page 4, Line 30; Page 6, Line 3:

- ~~[g.]~~~~[+h.+]~~ Parking: One off-street space ~~[per unit]~~ ~~[+is allowed for the secondary dwelling unit+]~~.

13. Page 2, Lines 21-24; Page 3, Lines 26-29; Page 4 & 5, Lines 31 & 32 and 1 & 2; Page 6, Lines 4-7:

- ~~[h.]~~~~[+i.+]~~ Design. The design of the secondary dwelling unit shall relate to the design of the primary dwelling unit by use of similar exterior wall materials or finishes, ~~[+colors, +]~~ architectural style and elements, including but not limited to roofing materials and roof pitch.
-

Catalina Lehner, AICP
Senior Planner

CITY OF ALBUQUERQUE AGENCY COMMENTS

PLANNING DEPARTMENT

Code Enforcement

Code Enforcement Staff did not comment as part of agency comments. Rather, Staff interviewed the Zoning Enforcement Manager about the proposed text amendments. His concerns, mainly about the enforceability and practicality of the proposed text amendments, are discussed in Section V of this report.

Office of Neighborhood Coordination (ONC)

Citywide. Staff Planner to provide ONC with a NL article for the September/October 2014 issue – siw. The following was published in the Neighborhood News:

Project #1001620, 14EPC-40064: Proposed Text Amendments to the Zoning Code – At its regularly scheduled public hearing on October 9, 2014, the Environmental Planning Commission (EPC) will consider text amendments to the following sections of the Zoning Code: 14-16-1-5, Definitions; 14-16-2-2, the RO-1 Rural and Open Zone; 14-16-2-6, the R-1 Residential Zone; 14-16-2-10, the R-G Residential Garden Apartment Zone; and 14-16-2-11, the R-2 Residential Zone.

The proposed text amendments would do the following: 1) add a definition for secondary dwelling unit; 2) make secondary dwelling units a conditional use in the RO-1 and R-1 zones; and 3) make secondary dwelling units a permissive use in the R-G and R-2 zones. The proposed text amendments would apply City-wide.

Please contact Catalina Lehner-AICP, Senior Planner, at (505) 924-3935 for more information.

Long Range Planning

The request is to amend the zoning code to add a definition for secondary dwelling units and to make secondary dwelling units a permissive or conditional use in certain residential zones. The request is consistent with the intent of the Comprehensive Plan to move the city towards a net density of 5 dwelling units per acre, and efficient use of public investments in infrastructure.

The amendment is carefully crafted to ensure the secondary dwelling unit is subordinate to the main dwelling in height, location, size (square footage), and of compatible architectural style.

The proposed text change acknowledges and reflects recent demographic and lifestyle changes, such as Baby Boomers wanting to downsize and/or age in-place, Millennials living with parents beyond their teenage years, and an increased number of multi-generational families.

Long Range Planning supports these amendments.

CITY ENGINEER

Transportation Development Services

- No objection to the request.

Hydrology

- Hydrology recommends a square footage maximum for the garage/shed. A large garage/shed in the backyard may create a drainage problem for the lot.

DEPARTMENT of MUNICIPAL DEVELOPMENT

Transportation Planning

- No comments received.

Traffic Engineering Operations (Department of Municipal Development):

- No comments received.

Street Maintenance (Department of Municipal Development):

- No comments received.

New Mexico Department of Transportation (NMDOT):

- The NMDOT has no objections to the Zone Code amendment.

**RECOMMENDED CONDITIONS FROM CITY ENGINEER, MUNICIPAL DEVELOPMENT
and NMDOT:**

Conditions of approval for the proposed Text Amendments shall include: None.

WATER UTILITY AUTHORITY

Utility Services- No comments received.

ENVIRONMENTAL HEALTH DEPARTMENT

Air Quality Division- No comments received.

Environmental Services Division- No comments received.

PARKS AND RECREATION

Planning and Design- No comments received.

Open Space Division

Reviewed, no comment.

City Forester- No comments received.

POLICE DEPARTMENT/Planning- No comments received.

SOLID WASTE MANAGEMENT DEPARTMENT

Refuse Division

Approved. Must comply with SWMD Ordinance.

FIRE DEPARTMENT/Planning- No comments received.

TRANSIT DEPARTMENT

Project # 1001620 14EPC-40064 AMNDT TO ZONING CODE OR SUBDN REGS TEXT. PLANNING DEPARTMENT FOR COUNCIL SERVICES. CITYWIDE.	Adjacent and nearby routes	None.
	Adjacent bus stops	None.
	Site plan requirements	None.
	Large site TDM suggestions	None.
	Other information	None

COMMENTS FROM OTHER AGENCIES

BERNALILLO COUNTY- No comments received.

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY- No comments received.

ALBUQUERQUE PUBLIC SCHOOLS- No comments received.

MID-REGION COUNCIL OF GOVERNMENTS

The over-65 population is projected to increase from the current 12 percent of the population to 20 percent by 2035 (2035 MTP, Section 6, p.2). Allowing for accessory dwelling units enables families to care for and stay close to aging family members while letting them maintain their autonomy. Accessory dwelling units provide people with another housing option and can increase housing density through infill development without building up, potentially obstructing views.

Text from the State Statute of New Mexico supports the implementation of accessory dwelling units. It states, "Zoning authorities, including zoning authorities of home rule municipalities, shall accommodate multigenerational housing by creating a mechanism to allow up to two kitchens within a single-family zoning district, such as conditional use permits" (3-21-1, 2007).

MIDDLE RIO GRANDE CONSERVANCY DISTRICT- No comments received.

PUBLIC SERVICE COMPANY OF NEW MEXICO

PNM has no comments based on information provided to date.